Superior Court of Arizona
in Maricopa County

En Banc

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Newsletter of the Superior Court Law Library

INSIDE:

En Banc
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Superior Court Law Library

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Law Library News

❑ "Celebrate Your Freedom" - Law Day,1999

In its 42nd year, Law Day, traditionally held on May 1st, is an annual event that provides the opportunity for citizens to expand their awareness of our nation's laws and to learn how these laws impact our lives. The Law Library will be hosting a series of Law Day events on April 30th. In addition to learning how to use our electronic resources, you can stop by to watch some of our legal practice videos or listen to the Honorable William Schafer talk about lying in the courtroom and what can be done about it. The Judge will be speaking at 12:30 in the Cordova Training Room on the third floor of the Law Library.

❑ Copyright in the New Millennium

On Friday, May 21 from 9 am to noon, the Law Library will be hosting the satellite broadcast *Copyright in the New Millennium: The Impact of Recent Changes to U.S. Copyright Law*. This teleconference is being co-sponsored by several library associations including the American Association of Law Libraries and the American Library Association.

The broadcast will be held in the Cordova Training Room and will cover such topics as: "how online service providers must register with the Copyright Office; what education institutions must do to educate their users about copyright compliance; and what studies must be conducted to ensure the long-term protection of fair use."

A panel of speakers including Laura Gasaway from the University of North Carolina's law school and Peter Jaszi from the American University will discuss the new laws and their implications for libraries, archives, and educational institutions.

For more information about the broadcast, or to reserve a spot, please contact Sarah Andeen at 506-3681 or via e-mail at sandeen@smtpgw.maricopa.gov. There is no charge to register, but space is limited.

❑ Library Staff

Marlo Young is the Law Library's newest aide. A native to the Valley and an Arizona State University alumna, Marlo earned her bachelor's degree in English Literature. While completing the Writing Certificate Program at A.S.U. West, Marlo served as a copy editor for *Palo Verde*, the campus' award- winning literary magazine. In her spare time, she serves as a taxonomist for a professional writer.

Prior to joining the Law Library, Marlo worked at Fletcher Library as an assistant for Reference Services. Her future objectives include the pursuit of a master's degree in library science.

Ty Morita joined the Library, also as an aide, the week before Marlo. He received his bachelor's degree in Biology from Arizona State University and during the last two years, worked as an organic farmer in the Phoenix metropolitan area. He plans to return to school this summer to pursue yet another degree.

When he is not working in the Library or in the Home Depot garden department, Ty likes to go camping, play golf and can usually be found at one of the many coffee bars in the Tempe area.

❑ Law Library Web Page

The Law Library has recently added a new database to its web page to assist you with your legal research. *Criminal Justice Abstracts* provides access to the abstracts of articles on crime trends, prevention and deterrence, juvenile justice, courts, and sentencing. The database also provides an index to and abstracts of journal articles, books, and government reports. You can search for materials by author, title, journal name, or keyword. This is not a full-text database, but you will get an abstract of the article to help you decide if it is something you would like to read.

Access to this database is via the Internet. There is a link from our web page or there is an icon in the Online Database menu that will take you directly into the product. This database is only available to those users who are in the downtown facility or Southeast Branch of the Law Library.

❑ CLE Information

Insurance practitioners at all levels should attend the *Arizona Liability Insurance Coverage* seminar, sponsored by the Arizona State Bar on Friday, April 30, 1999 from 8:45 until 4:45 at the Embassy Suites Resort in Scottsdale. Justice Stanley Feldman will be there to offer his viewpoints on the "reasonable expectation" doctrine and its development. Judge Michael Yarnell will be giving his insights on representing your clients more effectively before the court in insurance disputes. A panel of expert insurance practitioners will discuss the law and practice surrounding Morris agreements, bad faith, uninsured and underinsured motorist coverage, and intentional acts exclusions along with other areas of insurance law. Earn 6 hours of Mandatory Continuing Legal Education. There will also be a certificate given to each attendee for $25 dollars toward the purchase of *Arizona Liability Insurance Law* by Steven Pitt, Esq.

Legal Research Over the Internet: Advanced Workshop is for you if you are already familiar with the following: Listservs and Newsgroups, Internet Explorer or Netscape Navigator, File Transfer Protocol (FTP) Universal Resource Locators (URL) the World Wide Web (www) and Tenet. You will fit right in if you have attended the State Bar's *Hands -On Workshop for Using the Internet in Your Practice.* This class is offered in the morning (9:00-12:15) or afternoon (1:30-4:45) on May 5 and again on June 2. A.S.U. Downtown at the Mercado is the place to expand your resources of information and Internet knowledge. Kathy E. Shimpock will be your guide through this Internet experience. Ethics credit of 3 hours will be given for attendance.

Anyone who litigates in Arizona should attend *The Year in Evidence*. The State Bar will be sponsoring this seminar on three separate dates: Friday April 30 from 1:15 to 4:30 in Tucson at the Westin La Paloma; Friday May 14, 1:15 to 4:30 at the Embassy Suites in Scottsdale; and Friday June 4 in Flagstaff at the Radisson Woodlands Hotel from 1:15 to 4:30. Judge Cole and Judge McClennen will review the 1998 civil and criminal evidence cases, discuss the laws of evidence, trends, problem areas they see, and suggest how to handle and avoid evidentiary problems in a proper fashion. Bring your copy of the Arizona Courtroom Evidence Manual or the Arizona Rules of Evidence to this seminar. You can also purchase the Arizona Courtroom Evidence Manual, 3d edition at a 10% discount at the seminar. Your attendance at this popular seminar will qualify you for up to 3 hours of Mandatory Continuing Legal Education, Injury & Wrongful Death Litigation, or Criminal Law specialization credit.

Superior Court Update

Our newest judge, David M. Talamante, and his wife, Norma, are both Arizona natives and live in Gilbert. They have two daughters, Sara, 16 and Rebecca, 14 who attend Gilbert High. They have one son, Jaime, who is a junior at A.S.U.

Judge Talamante's first job as a lawyer was with Community Legal Services. He then served as an Assistant Attorney General in the financial fraud division. In 1981, he was appointed Assistant Real Estate Commissioner and later was appointed Registrar of Contractors where he served until mid-1986.

Judge Talamante then went into private practice, specializing in real estate and construction related litigation. He also had an administrative practice with an emphasis in proceedings before state regulatory agencies. Before taking the bench, he again served at the Attorney General's office as Chief Counsel of the Transportation Section.

Judge Talamante has taken over Judge Hall's civil calendar and is located on the 3rd floor of the Old Courthouse. "The work is interesting and challenging. Thanks to my staff the transition into the position has been a smooth one and I haven't fallen too far behind ....yet".

Judge Peter C. Reinstein was sworn in on January 8, 1999. Prior to his appointment, he served as the presiding commissioner for Family Court as well as serving on the criminal bench. Previously, he was the bureau chief of the criminal division for the Maricopa County Attorney's Office.

Judge Peter Reinstein earned his B.S. in 1971 and his J.D. in 1974 from Indiana University. He was admitted to the State Bar of Arizona and the State Bar of Indiana in 1975. Thereafter, he served as the law clerk fro the Honorable Jack L. Ogg

of the Arizona Court of Appeals until May of 1976 when he joined a law firm where he practiced in the area of commercial litigation.

He has volunteered as an arbitrator for the Superior Court and is an active public speaker at schools and community groups throughout the Valley. Judge Reinstein currently serves on the Peer Review Committee, Criminal Rules Committee and Criminal Jury Instruction Committee of the State Bar of Arizona. He also serves on the board of directors of the Camelback-Arcadia Homeowner's Association and as a mentor at the Thomas J. Pappas School.

❑ Did You Know?

Test your knowledge about the following famous cases and court procedures.

1. What is perhaps the most famous footnote in the history of the U.S. Supreme Court jurisprudence?

2. How many Justices of the U.S. Supreme Court must vote for certiorari before it will be granted?

3. What case established the right of a party of proceed pro se in a state lawsuit?

4. In what case did the U.S. Supreme Court hold that there is no general federal common law?

5. What happens if the U.S. Supreme Court votes 4-4 on a particular case, 4 for reversal and 4 for affirmance?

❑ Internet Site Reviews

CAPLA - College of Architecture, Planning, and Landscape Architecture
http://architecture.arizona.edu

Click on this address to see the new federal courthouse actually "rising before your eyes." Started by a group of University of Arizona architecture students, this web site began last summer as a class project. A collaborative effort between students, the university, the U.S. General Services Administration and several architectural firms, the project serves as a learning tool and gives others the opportunity to see the project progress.

Students from Tucson make weekly trips to Phoenix to take pictures and sketch the ongoing work. The images are than put on-line. In the near future, Virtual Reality video clips and interview clips with those involved in the project will made available.

The participants wanted to posts the project's blueprints on-line but had to carefully consider security issues. While the posted blueprints have been altered to avoid compromising security, they still give the viewers a very good idea of what the building will look like.

Also included in this site is a link to the history of courthouses from 1735. Take a look and follow the progress of this 560,000 square foot project which will feature a glass and steel atrium "roughly the size of a football field."

Phoenix Better Business Bureau
www.phoenix.bbb.org/

The Phoenix Better Business Bureau web page offers "instant access to business and consumer alerts" on both local and national issues. The Bureau offers a dispute resolution service, including binding and conditionally binding arbitration, mediation, and informal dispute settlement. Their *Autoline* program is one of the nation's largest out-of-court dispute programs. Online complaint forms are included.

The resource library page features ordering information for Better Business Bureau publications on Americans with Disabilities Act, honest advertising, and more than 70 "Tips On ..." booklets (such as Tips on Consumer Credit or Tips on Buying by Mail). Users may also search for other Better Business Bureau offices in the U.S. and Canada, and link to a membership directory. The Phoenix Better Business Bureau represents about two-thirds of the state, including Central, Northeastern, Northwestern, and Southwestern Arizona.

California Judicial Council Forms
www.courtinfo.ca.gov/cgi-bin/forms.cgi

The California Judicial Council has created a set of forms for use when filing actions in California courts. Most of the Judicial Council forms are available on the web site including: Summons, Motion for Modification of Child Support, Wage and Earnings Assignment Orders, Cause of Action - Products Liability, and Complaints - Unlawful Detainers.

These forms are available in Adobe format. This means you can print out the forms and fill them in by hand or on a typewriter, but you cannot fill them in electronically. You can access forms by form number or by browsing by topic.

Court Decisions on the Web
www.stanford.edu/group/law/library/how/web-courts.htm

Federal Administrative Decisions
www.law.virginia.edu/Library/govadm.htm

One of the most common uses of the Internet by attorneys is locating court opinions. However, this can be a tricky task, especially for United States District Courts and Federal agency opinions. In order to assist people in locating these hard-to-find court sites, law libraries are stepping in and creating directories to these sites. If you are trying to find District Court or agency decisions on the Internet you will be best served by starting at one of these two sites.

Court Decisions on the Web, created by the staff at Stanford's Rose Crown Law Library, provides users with links to court sites that provide decisions. Covering not only the United States Supreme Court and Circuit Courts, this site also has links to District Court and Bankruptcy Court decisions. In addition, the librarians have located links to U.S. state and International court sites. Although there are better sites for locating state court decisions, this site in an excellent starting point for those hard to find District Court opinions.

Another set of decisions that can be hard to locate are those opinions or rulings issued by the various federal agencies. The *Federal Administrative Decisions* site, from the University of Virginia School of Law, provides links to decisions available on the Internet including Comptroller General decisions, H.C.F.A. rulings, and I.N.S. administrative decisions.

Although neither of these sites are annotated or provide any kind of searching capabilities, they are still excellent resources and should be considered as starting points when trying to locate decisions on the Internet.

❑ Publications of Interest on the Internet

Commission on the Structural Alternatives for the Federal Courts of Appeals, Final Report Submitted to the President and the Congress
http://app.comm.uscourts.gov/final/appstruc.pdf

The Commission, chaired by Byron White, Associate Justice (retired) of the U.S. Supreme Court, studied the issue of splitting the Ninth Circuit into smaller circuit courts. The report, published on the Ninth Circuit's web page and delivered to the President and the Congress in December, concludes that splitting the circuit is impractical and unnecessary, and that the Ninth Circuit Court of Appeals "should continue to provide the West a single body of federal decisional law."

The Commission recommends that the Ninth Circuit should be restructured into smaller, regionally based divisions, with each division to decide appeals arising from its region. Each region would have seven to 11 circuit judges, with the majority residing in the division, but including some judges from other divisions to "enhance interdivisional consistency." The circuit judges for each region would sit en banc, and the circuit-wide en banc function would be abolished. A "Circuit Division," with 13 judges from the other regional divisions, would resolve conflicts between the regional divisions.

Regarding the federal circuits in general, the Commission recommends that circuit-splitting "will rarely be feasible without extensive and undesirable circuit reconfiguration," and that the Congress should authorize courts with more than 15 justices to restructure themselves into smaller divisions such as those proposed for the Ninth Circuit.

New in the Library

❑ Book Reviews

Arkfeld, Michael R. *The Digital Practice of Law*, 4th Ed. Phoenix: Law Partner Publishing, 1999.
KF 320.A9 A75 1999

Michael Arkfeld designed his most recent publication to give readers basic information about computer technology and how the implementation of this technology can "literally give you the winning edge in today's legal arena." Mr. Arkfeld calls this application of computer technology the "total" approach. By this he means that from the moment you begin your case until the last appeal, your PC can keep you in control of your case and help you stay competitive as computer technology advances even more.

The Digital Practice of Law is nicely organized into eight chapters which help guide you through the process of automating your practice. The author begins by presenting some "persuasive reasons" for automating followed by basic information about hardware, software, networking and Intranets, the Internet and building your own web site.

Chapter 5 is entitled *Management and Personnel Technology Considerations* and includes the many different types of computer training available today. In this chapter, the author stresses the importance of "leadership and a commitment from management" for a successfully automated law practice.

The remainder of this book discusses how to apply computer applications to your practice. For example, Chapter 6 covers such topics as case management, timekeeping, imaged documents, graphics, as well as brief summaries of on-line databases and search engines. Chapter 7 focuses on how to control paper and digital material while the final chapter examines the use of technology in the courtroom. As one reviewer put it, *The Digital Practice of Law* "should become the standard reference book

for lawyers, judges, and IT managers interested in moving their practice into the 21st Century."

❑ Article Reviews

Thumma, Samual A. and Lynda C. Shely. "The State Bar of Arizona Fee Arbitration Program" 35 *Arizona Attorney* 28 (March 1999).

One of the most common disputes between attorneys and their clients is over the final bill. Often times these disputes can turn nasty and escalate out of control into disciplinary complaints. The State Bar of Arizona has developed a fee arbitration problem to help resolve some of these conflicts before they lead to larger problems.

This article explores how the program was developed, how cases are handled, how arbitrators are appointed, how awards are issued, and how the collection of judgments is enforced. Thumma begins by describing the foundations of the program back in the 1960's and traces how the services developed over time.

Thumma and Shely go on to discuss how the program operates, who can initiate proceedings, how arbitrators are appointed, what a typical hearing is like, and how awards are determined and enforced. Each section of the article gives readers a good sense of what will happen if they take a case to fee arbitration and gives a deeper understanding of why the service operates the way it does. This is an interesting article that provides readers with a good overview of the State Bar's fee arbitration program and may help people decide if fee arbitration is a good alternative to their fee disputes.

Green, Bruce A. "The 10 Most Common Ethical Violations." 35 *Trial* 71 (March 1999)

This article takes a look at how some litigators cross ethical lines, oftentimes without even being aware that they are violating the Code of Ethics. Green outlines the 10 most common violations, discusses how the rules are broken, and gives some reasons behind why many attorneys behave in an unethical manner.

Green begins with one of the most frequent violations, incivility. It can be very difficult to determine when incivility crosses the line from rudeness into an ethical violation. The section discusses how standards vary from region to region and explores the impact of the recent civility codes that are cropping up in courts throughout the country. Many attorneys simply see rudeness as a way of doing business and do not feel that they are in breach of any code, however, this article gives readers a sense of what really is inappropriate behavior.

The article then goes on to discuss other issues such as the mishandling of client funds, neglect, conflicts of interest, and incompetent representation. For each issue covered, Green provides readers with a look at the problem, some reasons why attorneys may commit these violations, and some basic solutions. One thing that is made clear throughout this article is that many of these violations may occur because of lack of communication, experience, or skill rather than a willful disregard for the ethical implications of their actions. Although most attorneys will make it through their career without having disciplinary sanctions imposed against them, this article shows ways in which attorneys can modify their behavior to help ensure that an ethical violation does not occur.

Recent Court Decisions

❑ Arizona

In re the Marriage of Zale v. Zale, 286 Ariz. Adv. Rep. 47 (Arizona Supreme Court, January 12, 1999).

The meaning of a judgment cannot be resolved by consideration of evidence extrinsic to the record, the Arizona Supreme Court held in this marital dissolution case. The court reversed the Court of Appeals' and the trial court's resolution of a dispute concerning the decree of dissolution.

The Zales had stipulated to an award of spousal maintenance to be paid by Mr. Zale to Mrs. Zale. The trial court filed a minute entry setting forth the terms, which provided that the monthly payments would terminate after 36 months. Mr. Zale's attorney drafted the decree, which the trial court signed after receiving no objection from Mrs. Zale's attorney. The decree differed from the minute entry by failing to specify that the spousal maintenance would terminate in 36 months; rather, the decree provided that "[t]his spousal maintenance obligation shall be reviewed 36 months after the signing of this decree."

At subsequent review hearings, the Zales disputed whether or not the decree established a spousal maintenance award of indefinite duration. The trial court heard testimony from the Zales and Mr. Zale's attorney concerning their understandings of the duration of spousal maintenance and concluded that the decree provided for a fixed term. Mrs. Zale appealed, and the Court of Appeals upheld the ruling of the trial court.

The Supreme Court granted review to determine whether parole evidence is admissible to alter a judgment. The court held that it is not, noting that "[a] judgment is not an agreement between or among the parties. * * * To apply the [parole evidence] rule to a judgment * * * would make the court nothing more than another party to a contract, thus undermining the integrity of the judicial process and the authority of the court to resolve disputes. It also

would impinge upon the finality of judgments."

The court concluded that "the parole evidence rule, a rule of substantive contract law, does not apply to a judgment." It held that the Zales' decree of dissolution established a spousal maintenance award of indefinite duration. The case was remanded to the trial court for reconsideration, at which time Mr. Zale would bear the burden to demonstrate a change in Mrs. Zale's circumstances.

Panzino v. City of Phoenix, 290 Ariz. Adv. Rep. 37 (Arizona Court of Appeals, Division One, March 11, 1999)

The Arizona Court of Appeals decided that a lawyer's neglect of a client's case was so egregious as to entitle her to reinstatement of the claim, which had been dismissed for lack of prosecution, on the equitable ground of constructive abandonment.

In 1993, Laura Panzino was struck by a car as she walked in a Phoenix street to bypass rainwater ponding in her path. Panzino retained attorney David Appleton to represent her. Appleton filed two identical personal injury actions against the driver of the car and the City of Phoenix.

In the first case, Appleton neglected to serve either defendant and the trial court sent a "Notice of Intent to Dismiss" the lawsuit if it was not served by June 5, 1995. Two days later, Appleton finally gave the summons and complaint to a process server, who served the city on June 9, 1995. The other defendant was never served.

The city moved to dismiss the complaint for lack of timely service. Appleton did not respond and the case was dismissed for lack of prosecution on July 29, 1995.

In the second case, filed 18 months after the first case, Appleton also failed to serve the summons and complaint upon the defendants and the trial court sent a "Notice of Intent to Dismiss" the case if service was not completed by May 14, 1995. The city was served with this complaint on May 12, 1995. By this time, however, the claim against the city was time barred. The trial court soon granted the city's motion to dismiss this second case against it.

By this time, Appleton also could not find the defendant driver. Appleton attempted to serve this defendant by serving the Superintendent of the Arizona Motor Vehicle Department, but failed to do this correctly. Appleton filed "a patently noncompliant" Notice of Service with the trial court on August 2, 1995. He then did nothing until December 19, 1995, when, "in his single effective act of lawyering" since the case's inception, he consented to the substitution of a new lawyer for Panzino.

The new lawyer promptly filed motions in both cases and began to actively prosecute them. The defendant driver was personally served. In subsequent hearings, the trial court reinstated the first case against the city on the ground that Appleton had so completely neglected Panzino's case as to constructively abandon her claim. In the second case, however, the court granted the defendant driver's motion to dismiss, finding that Appleton's efforts in that case, however inept, did not amount to abandonment of the claim.

The city appealed the first case and Panzino appealed the second. The Court of Appeals noted that although no Arizona appellate court to date has found an attorney's neglect so egregious and pervasive as to amount to an abandonment of the client, the issue also has not been completely foreclosed. Rule 60(c)(6) of the Arizona Rules of Civil Procedure allows a court to set aside a final judgment for "any … reason justifying relief" beyond the specific reasons listed in the other clauses. The trial court has broad discretion in using this equitable tool. The Court of Appeals declined the defendants' plea "to so starkly foreclose the availability of equitable relief … from judgment to clients who are the victims of their lawyers' inexcusable neglect."

The court upheld the trial court's grant of relief from judgment in the first case against the city. It then found "no practical difference" between Appleton's neglect of the second case and that of the first case. "Each was egregious; each was consistent, wide-ranging, and of long duration; each was fatal." The trial court's denial of relief in the second case was reversed.

The court also instructed that upon remand, at the request of either defendant and with appropriate notice to Appleton and an opportunity to be heard, the trial court may consider that an award of their attorneys' fees and costs "incurred because of Appleton's unreasonable delay and expansion of the proceedings" be assessed against him.

State Farm Mutual Automobile Insurance Company v. Loesl, 1 CA-CV 98-0216 (Arizona Court of Appeals, Division One, April 1, 1999).

An individual who drove his intoxicated friend to his vehicle is not responsible under his automobile insurance policy for the friend's subsequent accident, the Court of Appeals held in this declaratory judgment action.

Jack Boyle drove Bobby Sims back to Sims' truck after Sims had spent much of the day drinking. About two hours later, Sims caused a car accident in which Mary Loesl was killed. Sims' blood alcohol content was 0.28.

At the time of the accident, Boyle had

a State Farm insurance policy which provided liability coverage for bodily injury to others or property damage resulting from the use of his car. Mary Loesl's husband made a claim against Boyle's policy. State Farm denied the claim and filed a declaratory action seeking a ruling that its policy did not provide liability coverage for Boyle's alleged failure to prevent Sims from driving while intoxicated. Loesl asserted that if Boyle had used his car as he should have and driven Sims home rather than to his truck, the accident would not have occurred.

The trial court granted State Farm's motion for summary judgment, finding that the policy did not provide coverage for the accident caused by Sims. Loesl appealed.

The Court of Appeals noted that "[u]nder Arizona law, for liability coverage to apply when a 'use' provision is in effect, a causal relationship between the injury-causing accident and the use of the covered vehicle must exist." It found no such causal relationship here. The court concluded that Boyle's use of his vehicle to take Sims to his truck was "not a negligent use of Boyle's vehicle" and did not cause Mary Loesl's death. The accident was not caused by Boyle's negligent driving. "The duty to refrain from enabling an intoxicated person to drive a vehicle," the court stated, "is independent from the duty to drive a vehicle in a safe manner."

The court affirmed the granting by the trial court of summary judgment to State Farm. "Insurers should not be responsible for liability coverage that is far beyond what the parties to the policy intended."

❑ From Other Jurisdictions

United States v. Dickerson, 166 F.3d 667 (4th Circuit, February 8, 1999).

In a decision that many legal scholars believe will offer the United States Supreme Court an opportunity to overrule *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Fourth Circuit Court of Appeals held that confessions obtained voluntarily by federal law enforcement officials may not be suppressed simply because a defendant was not given his *Miranda* warnings.

The defendant, Dickerson, was charged with federal bank robbery and related offenses. He moved to suppress his confession. The trial court found that although Dickerson's statements were voluntary, the police had failed to inform him of his *Miranda* rights and therefore the confession was inadmissible. The government appealed.

At the outset, the Fourth Circuit rebuked the government for refusing to rely upon 18 U.S.C. § 3501, a law passed by Congress in 1968 in reaction to the *Miranda* decision. Section 3501 provides in pertinent part that "a confession . . . shall be admissible in evidence if it is voluntarily given." The court found it "evident that Congress enacted § 3501 with the express purpose of legislatively overruling *Miranda* and restoring voluntariness as the test for admitting confessions in federal court. Thus, if Congress possessed the authority to enact § 3501, Dickerson's voluntary confession is admissible as substantive evidence in the Government's case-in-chief."

Since the passage of the law in 1968, no Department of Justice administration has claimed that the law governs the admissibility of confessions in federal court. United States Attorney General Janet Reno told Congress in September 1997 that the department would not rely on the law in federal district or appellate courts. The government did not argue in this case that § 3501 required admission of Dickerson's confession and the trial court did not consider the issue. The Fourth Circuit quickly decided that these circumstances did not impede it from reaching the issue, stating that "[t]he Department of Justice cannot prevent us from deciding this case under the governing law simply by refusing to argue it."

The court found that determining whether Congress possesses the authority to enact § 3501 was "relatively straightforward." It noted that Congress has the power to overrule judicially created rules of evidence and procedure that are not required by the Constitution. The court found that the United States Supreme Court has not held that *Miranda* warnings are required by the Constitution. The court continued: "We have little difficulty concluding, therefore, that § 3501, enacted at the invitation of the Supreme Court and pursuant to Congress's unquestioned power to establish the rules of procedure and evidence in the federal courts, is constitutional. As a consequence, we hold that the admissibility of confessions in federal court is governed by § 3501, rather than the judicially created rule of *Miranda*."

The trial court had found that Dickerson's statements were voluntarily made. Therefore, the Fourth Circuit held, the confession was admissible by virtue of § 3501 despite the *Miranda* violation and the trial court erred by ordering the evidence suppressed.

United States v. Doe, No. 98-50172 (9th Circuit, March 17, 1999)

On the opposite coast, another federal circuit court of appeals reaffirmed the importance of the *Miranda* warnings. Addressing an issue of first impression, the Ninth Circuit Court of Appeals decided that an arresting officer must inform parents of their juvenile child's *Miranda* rights at the same time they are told the child is in custody. The court held, however, that although Doe's mother was not so informed in this case, the error was harmless and the judgment was affirmed.

The court's decision was based on 18 U.S.C. § 5033, which requires officers to immediately advise the arrested juvenile and the parents "of the rights of the juvenile and of the nature of the alleged offense." Doe was detained after custom inspectors discovered more than 100 pounds of marijuana in the van he was attempting to drive into California from Mexico. An officer informed Doe's mother of his arrest, but did not advise her of Doe's *Miranda* rights. The officer then formally arrested Doe and read him his *Miranda* rights. Doe indicated he understood his rights and eventually answered the officer's questions concerning his involvement in the smuggling.

The district court denied Doe's motion to suppress his confession. Although the court concluded that the officer's failure to notify Doe's mother about Doe's *Miranda* rights was a violation of 18 U.S.C. § 5033, it determined that this error was harmless and that Doe's confession was knowing, intelligent and voluntary. The Ninth Circuit agreed. The court noted that whether § 5033 requires an arresting officer to notify a juvenile's parents of the juvenile's *Miranda* rights prior to interrogation was a question of first impression. Section 5033 does not identify which rights need be explained to parents or the timing of such an explanation. However, it is the arresting officer and "not a subsequent official who might handle the judicial phases of the matter" who must comply with all the notification requirements of § 5033. Since the statute requires immediate parental notification as to the existence of initial custody, the court reasoned, failing to include *Miranda* information would undermine the value of such a requirement. "Advising the parent of the juvenile's *Miranda* rights prior to interrogation is among the most substantive information an arresting officer can communicate to the parent."

Despite this violation of the statute, the Ninth Circuit concluded that reversal of the judgment was not required. The court found that even if Doe's mother was told of Doe's *Miranda* rights, she could not or would not have done anything with this information. Therefore, the statutory violation "did not cause or even contribute to Doe's decision to confess."

Brzonkala v. Virginia Polytechnic Institute & State University, 1999 WL 111891 (4th Circuit, March 5, 1999)

In contrast to its decision in *Dickerson* wherein it found that Congress lawfully enacted 18 U.S.C. § 3501, the Fourth Circuit Court of Appeals also held that Congress could not legislate against domestic violence by creating a private cause of action in 42 U.S.C. § 13981, the Violence Against Women Act. Legal scholars also predict that the United States Supreme Court will elect to review this decision.

The particular section of the act at issue in this case creates a private cause of action against any person who commits a crime of violence motivated by gender and allows any party injured by such a crime to obtain compensatory damages, punitive damages, and injunctive, declaratory, or other appropriate relief.

Christy Brzonkala filed a suit in federal district court under 42 U.S.C. § 13981 against Antonio Morrison and James Crawford, two football players whom she claims raped her. Brzonkala, Morrison and Crawford were students at Virginia Polytechnic Institute at the time of the incident at issue. In her complaint, Brzonkala alleged that the acts by Morrison and Crawford violated her right under 42 U.S.C. § 13981(b) to be free from gender-motivated crimes of violence.

Morrison and Crawford moved to dismiss Brzonkala's claim on the grounds that the complaint failed to state a claim under § 13981 and that, even if the complaint did state such a claim, Congress was without constitutional authority to enact § 13981. The United States intervened to defend the constitutionality of §13981. The district court concluded that Brzonkala stated a statutory claim against the defendants, but held that Congress was without authority under the United States Constitution to enact §13981. Brzonkala and the government appealed. A divided panel of the Fourth Circuit reversed the judgment of the district court, holding that §13981 was a legitimate exercise of Congress' power under the Commerce Clause. *Brzonkala v. Virginia Polytechnic Institute & State University,* 132 F.3d 949 (4th Cir.1997).

The full Fourth Circuit then decided to rehear the case *en banc*, resulting in this opinion. The court first found that Brzonkala's allegations were sufficient to withstand a motion to dismiss. The court then considered the constitutionality of the law. In a lengthy analysis, the court found that the United States Constitution does not give Congress the power to legislate in this area because the problem is not related to interstate commerce and does not involve state or local government violations of civil rights. "Such a statute, we are

constrained to conclude, simply cannot be reconciled with the principles of limited federal government upon which this nation is founded."

"Did You Know?" Answers

1. Footnote 11 in *Brown* v. *Board of Education*, 347 U.S. 483.

2. Four

3. *Faretta* v. *California*, 422 U.S. 806

4. *Erie R.R.* v. *Tompkins*, 304 U.S. 64

5. The lower court opinion is affirmed.

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